

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Allister D. Guerra,) Civil Action No.: 4:13-2062-MGL
)
	Petitioner,)
)
v.) <u>OPINION AND ORDER</u>
)
Kenny Atkinson,)
)
	Respondent.)
	_____)

On July 23, 2013¹, Petitioner Allister D. Guerra (“Petitioner”), an inmate housed at the Federal Correctional Institution in Edgefield, South Carolina, filed the instant petition for a *writ of habeas corpus* pursuant to 28 U.S.C. § 2241. (ECF No. 1). In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c), D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III, for pre-trial proceedings and a Report and Recommendation (“Report”).

On March 17, 2014, the Magistrate Judge issued a Report recommending that the court grant Respondent’s motion to dismiss or, in the alternative, motion for summary judgment, deny Petitioner’s motion for summary judgment, and dismiss Petitioner’s petition. (ECF No. 37). The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. (ECF No. 37-1). Petitioner has filed no objections and the time for doing so expired on April 3, 2014. Subsequent to the filing of the Report, Petitioner filed a motion to strike Respondent’s reply to his response to

¹This filing date reflects that the envelope containing the petition was stamped as having been received on July 23, 2013, by the Federal Prison in Edgefiled, SC. (ECF No.1-1). *Houston v. Lack*, 487 U.S. 266 (1988) (holding prisoner’s pleading is considered filed when filed with prison authorities for forwarding to the district court).

the motion to dismiss or, in the alternative, motion for summary judgment. (ECF No. 39).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

After a careful review of the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court finds no clear error. Accordingly, the court adopts and incorporates the Report and Recommendation (ECF No. 37) by reference into this order. It is therefore ORDERED that Respondent’s motion for summary judgment (ECF No. 26) is GRANTED, Petitioner’s motion for summary judgment (ECF No. 25) is DENIED, and the petition for writ of habeas corpus is DISMISSED. Petitioner’s motion to Strike (ECF No. 39) is DENIED as moot.

IT IS SO ORDERED.

/s/ Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
April 10, 2014